

SAINT CHRISTOPHER & NEVIS

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 1 of 1992

BETWEEN:

(1) BERNARD RICHARDS and  
(2) RONALD BROWNE

Appellants

and

(1) THE HON. ATTORNEY GENERAL  
(2) THE SUPERINTENDENT OF PRISONS

Respondents

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice  
The Honourable Miss Justice Joseph J.A. (Ag.)  
The Honourable Mr. Justice Matthew J.A. (Ag.)

Appearances: L. Moore, Dr. H. Browne and Miss A. Inness for the  
Appellants  
H.A. Rawlins (Solicitor General) for the Respondents

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1992: March 26th and 27th;  
Sept. 28th  
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JUDGMENT

FLOISSAC, C.J.

On the 11th April and 22nd May 1991 and after trials by juries presided over by Singh J., the appellant Ronald Browne and the appellant Bernard Richards were convicted of the murders of Viola "Bessy" Claxton and Mervyn Walters respectively and both appellants were sentenced to death by hanging.

On or about the 11th November 1991, the solicitors for the appellants applied to the Advisory Committee on the Prerogative of Mercy to commute the sentences imposed on the appellants. On the 13th January 1992, the Committee refused the applications.

On the 1st and 6th February 1992, the appellants filed in the High Court Notices of Motions for judicial redress under section 18 (1) of the 1983 Constitution of Saint Christopher & Nevis. By these motions, the appellants sought declarations that the executions of the sentences would be inhuman and degrading and would therefore contravene section 7 of the Constitution and the

fundamental right guaranteed thereunder. The appellants also thereby sought orders restraining the Superintendent of Her Majesty's Prison from executing the sentences.

The motions were heard by Singh J. who by judgment dated 6th February 1992 refused the declarations and orders sought. Whereupon the appellants appealed against that judgment.

This appeal involves the interpretation and interrelation of certain sections and paragraphs of the two Schedules to the Saint Christopher and Nevis Constitution Order 1983 (Imperial Order 1983 No.881) Schedule 1 whereto sets out the Constitution of Saint Christopher and Nevis and Schedule 2 whereto contains certain so-called Transitional Provisions. The general issue in this appeal is the interpretation and scope of section 7 of the Constitution which provides that:

"A person shall not be subjected to torture or to inhuman or degrading punishment or other treatment."

The specific issues in this appeal are (1) whether section 7 of the Constitution applies to or affects the constitutional validity of so-called inhuman or degrading types of punishment which were lawful before 27th February 1967 (the prescribed date) (2) whether death by hanging was a lawful type of punishment before the prescribed date and (3) whether the delays in the executions of the sentences of death rendered the executions inhuman and degrading and therefore constitutionally invalid.

**(1) The Scope of section 7.**

Section 3 of the Imperial Order provides that:

"The Constitution of Saint Christopher and Nevis set out in schedule 1 to this Order shall come into effect in Saint Christopher and Nevis on 19th September 1983 subject to the transitional provisions set out in schedule 2 to this Order."

Therefore, section 7 of the Constitution cannot be read in isolation. It must be read subject to paragraph 9 of the Transitional Provisions which provides that:

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 7 of the Constitution to the extent that the law in question authorises the infliction of any description of punishment that was lawful immediately before 27th February 1967 (being the date on which Saint Christopher, Nevis and Anguilla became an associated state)."

Counsel for the appellants sought to equate the word "law" appearing in paragraph 9 with the words "existing laws" specifically dealt with in paragraph 2 of the Transitional Provisions and defined in paragraph 2(7) for the purposes of that paragraph only. Counsel thereby sought to confine paragraph 9 to written law and to make paragraph 9 subject to paragraph 2(1) of the Transitional Provisions which provides that:

"The existing laws shall, as from 19th September 1983, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and the Supreme Court Order."

But the words used in paragraph 9 are "any law" and not "any existing law". Accordingly, the word "law" appearing in paragraph 9 must be interpreted by reference to paragraph 13(2) of the Transitional Provisions complemented by section 119(1) of the Constitution.

According to paragraph 13(2) of the Transitional Provisions:

"The provisions of section 119 of the Constitution shall apply for the purposes of interpreting this schedule and otherwise in relation thereto as they apply for the purposes of interpreting and in relation to the Constitution."

According to section 119(1) of the Constitution:

"In this Constitution, unless the context otherwise requires -

"law" means any law in force in Saint Christopher and Nevis or any part thereof, including any instrument having the force of law and any unwritten rule of law and "lawful" and "lawfully" shall be construed accordingly."

Therefore, the evident intent of section 3 of the Imperial Order and paragraph 9 of the Transitional Provisions is to assert the constitutional validity of any type of punishment which was lawful immediately before the prescribed date and any written or unwritten law which authorises the infliction of that type of punishment and to create a constitutional estoppel against any assertion that any such punishment or law is inconsistent with or in contravention of section 7 of the Constitution.

**(2) Death by hanging.**

Section 2 of the offences against the Person Act (Cap 56 of the Revised Laws of Saint Christopher and Nevis) provides that "Whoever is convicted of murder shall suffer death as a felon." Counsel for the appellants conceded that Cap 56 is a law which was in force immediately before the prescribed date and that the phrase "death as a felon" is a reference to death by hanging. Therefore, the combined effect of section 3 of the Imperial Order and paragraph 9 of the Transitional Provisions is to exclude death by hanging from the purview of section 9 of the Constitution and to assert the constitutional validity of that type of punishment without the need to engage in any endless philosophical controversy as to whether such punishment is torturous, inhuman or degrading.

**(3) The delays in the executions.**

The Judicial Committee of the Privy Council has more than once been required to pronounce on the question whether a delay in the execution of a sentence of death by hanging can in certain

circumstances constitute "inhuman or degrading punishment or other treatment". In **Riley v A.G. of Jamaica (1982) 3 A.E.R. 469**, the Privy Council was required to consider section 17(1) of the Constitution of Jamaica (which is identical in terms with section 7 of the 1983 Constitution of Saint Christopher and Nevis) and to do so in the face of section 17(2) of the Constitution of Jamaica (which is virtually the same as paragraph 9 of the Transitional Provisions of Imperial Order 1983 No. 881). Delivering the opinion of the majority of the Board, Lord Bridge said (at pp 472-473):

"The question, therefore, is whether the delayed execution of a sentence of death by hanging, assuming it could otherwise be described as 'inhuman or degrading punishment or other treatment', a question on which their Lordships need express no opinion, can escape the unambiguous prohibition imposed by the words in s 17(2) emphasised as follows:

*'Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment which was lawful in Jamaica immediately before the appointed day'.*

An act will fall within this prohibition if it satisfies three related conditions, viz: (a) it must be an act done under the authority of law; (b) it must be an act involving the infliction of punishment of a description authorised by the law in question, being a description of punishment which was lawful in Jamaica immediately before the appointed day; (c) it must not exceed in extent the description of punishment so authorised.

There can be no doubt whatever that a delayed execution would satisfy conditions (a) and (b). The only words in s 17(2) that are even arguably ambiguous are the words 'to the extent that'. It seems to their Lordships that in their context these words pose the question: to what extent did the law in Jamaica before independence authorise the description

of punishment which is under challenge? This question can only be answered by asking in turn the further question: if the like description of punishment had been inflicted in the like circumstances before independence, would this have been authorised by law? An obvious instance of a description of punishment exceeding in extent that authorised by law would be the execution of a death sentence by burning at the stake. But since the legality of a delayed execution by hanging of a sentence of death lawfully imposed under s 3(1) of the Offences against the Person Act could never have been questioned before independence, their Lordships entertain no doubt that it satisfies condition (c). Accordingly, whatever the reasons for, or length of, delay in executing a sentence of death lawfully imposed, the delay can afford no ground for holding the execution to be a contravention of s 17(1). Their Lordships would have felt impelled to this conclusion by the language of s 17 alone, but they are reinforced by the consideration that their decision accords fully with the general principle stated in *DPP v Nasralla* (1967) 2 All ER 161, (1967) 2 AC 238 and *de Freitas v Benny* (1976) AC 239."

Delivering a joint minority opinion, Lords Scarman and Brightman said (at p 476):

"The 'treatment' which is prima facie 'inhuman' under sub-s(1) is the execution of the sentence of death as the culmination of a prolonged period of respite. That species of 'treatment' falls outside the legalising effect of subs-s(2). Subsection (2) is concerned only to legalise certain descriptions of punishment, not to legalise a 'treatment', otherwise inhuman, of which the lawful punishment forms only one ingredient. Subsection (1) deals with 'punishment' and 'other treatment'. In the instant case the punishment is the execution of the death sentence. Subsection (2) is directed both to 'punishment' and to 'other treatment'. The 'other treatment', if inhuman, is not validated by sub-s (2), in our

opinion, merely because lawful punishment is an ingredient of the inhuman treatment.

Accordingly, in our opinion, the execution of the respective death sentences in May and June 1979, against the background of the lapse of time since conviction, would have been 'inhuman treatment' within the meaning of sub-s (1) of s 17 and would not have been saved from being unconstitutional and illegal by subs-s (2)."

Lords Scarman and Brightman concluded (at p 480) as follows:

"We answer, therefore, the question as to the meaning and effect of s 17(1) as follows. Prolonged delay when it arises from factors outside the control of the condemned man can render a decision to carry out the sentence of death an inhuman and degrading punishment. It is, of course, for the applicant for constitutional protection to show that the delay was inordinate, arose from no act of his, and was likely to cause such acute suffering that the infliction of the death penalty would be in the circumstances, which had arisen inhuman or degrading. Such a case has been established, in our view, by these appellants."

Counsel for the appellants invited this Court to depart from the opinion of the majority and to follow the opinion expressed by the minority in **Riley's Case**. This we should not do. Appeals lie from this Court to the Privy Council. Unless and until the Privy Council decides to endorse the opinion of the minority in **Riley's Case**, we should consider ourselves bound by the opinion of the majority.

It should be noted that the opinion of the minority in **Riley's Case** was predicated on a prolonged delay between the dates of the dismissals of the appeals against the convictions and sentences of the accused and the proposed date of executions of the sentences.

It was a delay of more than 3 years from 1976 to 1979. It was a delay measured in years rather than months. The delay in the present case is not the inordinate delay which inspired the opinion of the minority in **Riley's Case**.

In any case, we should adhere to the opinion of the majority in **Riley's Case** that "whatever the reasons for, or length of, delay in executing a sentence of death lawfully imposed, the delay can afford no ground for holding the execution to be a contravention of" section 7.

For these reasons I would dismiss this appeal.

**JOSEPH, J.A. (Ag.)**

I agree with the Learned Chief Justice.

Paragraph 13(2) of the Transitional Provisions in Schedule 2 of the Saint Christopher and Nevis Constitution Order 1983 enacts that section 119 of the Constitution governs the interpretation of that schedule. Sub-section (1) of this section defines "law" to mean "any law in force in Saint Christopher and Nevis ..... including .... any unwritten rule of law and 'lawful' and 'lawfully' shall be construed accordingly."

Counsel for the appellants conceded that, prior to 27th February 1967, death by hanging was the lawful method of execution by virtue of section 2 of the Offences against the Person Act (Cap. 56 of the revised laws).

This method of execution is preserved by paragraph 9 of the Transitional Provisions which provides that nothing done under the authority of any law shall be held to be in contravention of section 7 of the Constitution which section prescribes that a person is not to be subjected to torture or to inhuman or degrading punishment.

Section 7 does not apply to punishments that were lawful prior to 27th February 1967 which punishments by the operation of paragraph 9 were and are lawful.

I agree that the appeals be dismissed.

**MATTHEW, J.A. (Ag.)**

I agree with the judgment that has just been delivered by the learned Chief Justice.

I would just make some observations of my own in respect to death by hanging and the delays in executions.

**Death by hanging.**

Learned Counsel for the appellant submitted to this Court at the commencement of his arguments that the only issue in the appeal is whether the carrying out into execution of a sentence of death by the method of hanging in St.Christopher and Nevis is inhuman or degrading punishment. Counsel conceded that there was no evidence in the Court below as to the nature of hanging.

Counsel, if I may say so, seemed to have patterned his case on **Defreitas v Benny (1975) 27 W.I.R. 318** which he relied upon. As was done in that case he seemed to have "focussed his attack upon the act of the executive in carrying out an admittedly lawful order of a court of law." Counsel made a distinction between the written laws of Trinidad and Tobago and St.Christopher and Nevis; namely, that the law of Trinidad and Tobago, unlike that of St.Christopher and Nevis, states in specific terms the method of carrying out the order of the Court. I agree with the distinction, but as pointed out by the learned Chief Justice, paragraph 9 of the Transitional Provisions is not restricted to the written law of St.Christopher and Nevis.

**The delays in execution.**

In **Abbot v Attorney-General and Others (1979) 32 W.I.R. 347** at **page 352** the Judicial Committee of the Privy Council accepted that it was possible to imagine cases in which the time allowed by the authorities to elapse between the pronouncement of a death sentence and notification to the condemned man that it was to be carried out was so prolonged as to arouse in him a belief that his death sentence must have been commuted to a sentence of life imprisonment. They held that in such a case, which was without precedent, such delay would necessarily be measured in years rather than months; and accordingly it was not tenable to suggest that a delay of seven or eight months in dealing with an application for reprieve made the execution of the condemned man unlawful.

As indicated by the learned Chief Justice there was a period of six and seven months between the pronouncement of the sentences of the appellants Richards and Browne and their applications to the Advisory Committee on the Prerogative of Mercy. The Committee took two months before they refused the applications and the executions were fixed for a date approximately three weeks later.

I would dismiss the appeal.



V.F.FLOISSAC  
Chief Justice



MONICA JOSEPH  
Justice of Appeal (Ag.)



A.N.J.MATTHEW  
Justice of Appeal (Ag.)